UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEVIN ROGERS, Plaintiff, v. COUNTY OF RENSSELAER, JACK MAHAR, KATRINA DINAN and ELAINE YOUNG, Defendants.	**AMENDED COMPLAINT** Case No.: 14-CV-01162 (MAD/TWD) **JURY TRIAL DEMANDED**

This is a civil action brought to redress the deprivation by Defendants of rights secured to Plaintiff Kevin Rogers by the United States Constitution and federal statutes. Plaintiff Kevin Rogers has been a devoted employee of Rensselaer County since 1990. However, he was also one of many victims of Defendants' blatant disregard for federal privacy laws and Constitutional rights. Mr. Rogers' privacy was invaded when Defendants used their position of authority to obtain Plaintiff's personal medical records in order to harass Plaintiff and search for a reason to terminate Plaintiff's employment. This is not the first time that high ranking Rensselaer County officials have abused their power in order to access confidential information. Upon information and belief, Defendants have also improperly accessed the medical records of several other Rensselaer County Correction Officers and the medical records of a nine year old girl.

AND NOW, comes the Plaintiff, through counsel, and hereby states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter under the provisions of 28 USC §§ 1331, 1341, & 1343 because it is filed to obtain compensatory and punitive damages for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 USC § 1983, 42 U.S.C. § 12112, 18 U.S.C. §2721 *et. seq.*, and 18 U.S.C.§ 1030 *et. seq.*.

2. Venue is proper under 28 U.S.C. § 1391 (e)(2) because the events giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

3. Plaintiff Kevin Rogers is a citizen of the United States and currently resides in the County of Rensselaer.

4. Defendant County of Rensselaer is a municipality duly incorporated under the laws of the State of New York, with its principal place of business being 105 3rd Street, Troy, NY.

5. Defendant Jack Mahar was and remains the duly elected Sheriff of the County of Rensselaer, with his principal place of business being 4000 Main Street, Troy NY. Claims in this action are asserted against Mahar in his individual capacity.

6. At all times relevant to this action, Defendant Elaine Young and Katrina Dinan were Registered Nurses employed at the Rensselaer County Jail with her principal place of business being 4000 Main Street, Troy, NY. Claims in this action are asserted against Young and Dinan in their individual capacities.

FACTS

7. From 1990 through approximately 1996 and again from 2003 through the present, Plaintiff has been employed as a Corrections Officer by the Rensselaer County Sheriff's Department. In or around November 2003, Mahar won the election for Sheriff over Rogers' uncle, Jack Rogers. Rogers was active in the campaign of his uncle, publicly supporting him both in and outside of work.

8. Following Mahar's election, Rogers almost immediately became the target of retaliation for supporting Mahar's opponent in the election. In April 2004 Mahar had Rogers terminated for a false allegation of misconduct. Rogers challenged his termination and returned to work in or around July 2004.

9. In or around 2004, Sheriff Mahar instituted a policy governing the use of sick days by RCJ employees. Employees deemed to be in violation of the policy were placed on "sick abuse" status and were denied privileges and/or required to submit a physician's note to explain his/her absence.

10. In or around 2005, Rogers began the process to decertify the union then in place at the Rensselaer County Jail, and formed the Sheriff Employees Associate of Rensselaer County (SEARCO).

11. In between 2004 and late January 2012, Rogers was the near-constant target of harassment from Mahar. Specifically, Mahar suspended Rogers without pay on five (5) different occasions, which resulted in Rogers being suspended for over twenty-eight (months) without pay. Each of these suspensions was later found to be without merit and Rogers was restored backpay upon his return to work. However, these long periods without pay caused Rogers extreme hardship, including two bankruptcy filings and thousands of dollars of legal fees to

forestall foreclosure on his home. These baseless suspensions occurred in 2004, 2005, 2007, 2010, and 2011.

12. From 2004 through late January 2012, Rogers was given the least desirable jobs in the Rensselaer County Jail. Specifically, he was assigned to work only the specific "units" where the inmates were housed, and was not rotated to other more desirable shifts, such as recreational officer, program officer, medical officer, or kitchen officer. He was the only corrections officer during this time period who was not rotated through different positions at the jail every (6) six weeks, despite being a senior employee at the jail. Corrections officers are rotated between "units" and more desirable positions to avoid burnout.

13. Between the time period of 2004 and late January 2012, Mahar would routinely tell Rogers that he should "go on disability." These comments were made despite the fact that Rogers was medically fit to perform the essential functions of his position.

14. In or around 2010, Gary Gordon ("Gordon") announced that he was running for Rensselaer County Sheriff. Rogers once again publicly supported Mahar's opponent in the election. Mahar was fully aware of Rogers' support for Gordon and again retaliated against Roges for such support. Rogers public support for Gordon intensified in early 2011 and continued through the election. Rogers later learned that in the midst of his support for Gordon, his medical records were improperly accessed by employees at the jail. In November 2011, Gordon lost the election to Mahar.

15. On or about January 3, 2012, Mahar was once again sworn in as Sheriff. On or about January 30, 2012, Rogers was placed on administrative leave, without cause or justification, and has not been allowed on the Rensselaer County Jail premises since. Specifically, on or about January 30, 2012, Rogers was refused access to the Rensselaer County

Jail, was advised he was being placed on administrative leave, and has not been allowed on the property of the Rensselaer County Jail since.

16. As a result of being placed on administrative leave, Rogers has suffered substantial fiscal injury. Specifically, while Rogers still draws a paycheck, he now makes $25,000 - $40,000 less per year than similarly situated corrections officers at the Rensselaer County Jail, due to loss of overtime. The actions of being placed on administrative leave has caused irreparable damage to Rogers' career and professional reputation.

17. In or around March 2013, Plaintiff received a letter from Samaritan Hospital stating that information relating to the medical care that he received at Samaritan Hospital may have been improperly accessed by employees of the Rensselaer County Sheriff's Department.

18. Samaritan Hospital also sent Mr. Rogers a report detailing the dates on which his medical records were accessed. According to this report, Mr. Rogers' medical records were improperly accessed by Rensselaer County Jail ("RCJ") staff on at least the following occasions:

a. On or about July 10, 2006, Katrina Dinan, employee in the Nursing Department of the Rensselaer County Sheriff's Department, accessed Plaintiff's confidential medical records.

b. On or about July 27, 2006, Ms. Dinan accessed and printed Plaintiff's confidential medical records.

c. On or about February 9, 2011, Elaine Young, head nurse at the Rensselaer County Sheriff's Department accessed Complainant's confidential medical records.

19. Upon information and belief, Young and Dinan, at the direction of Mahar, accessed Rogers' records which included Rogers' social security number, medical diagnoses, clinical laboratory results, diagnostic imaging reports, emergency department records and

medication administration. Specifically, upon information and belief the records accessed revealed intimate details regarding Rogers' mental health history, including a history of depression.

20. At no time did Mr. Rogers given anyone from the Rensselaer County Sheriff's Department permission to access his medical records. Upon information and belief Rogers' medical were access at the direction of Mahar in an attempt to force Rogers into disability retirement and to intimidate and/or harass Rogers for supporting Mahar's opponents in previous elections.

21. At all times relevant to this action, Samaritan Hospital in Troy, NY provided the Rensselaer County Jail ("RCJ") nursing staff with access to the Hospital's electronic medical records system to facilitate the continuity of care for RCJ inmates who were treated at Samaritan Hospital. RCJ nursing staff could access the hospital's medical records via a computer terminal at the RCJ nurses' station and were only authorized to access inmate medical files.

22. Nursing Supervisor Elaine Young signed a written agreement that she would access patient records for authorized purposes only, and not for any purpose prohibited under applicable privacy laws and hospital policies. As part of that agreement, Defendant Young was responsible for securing the network password that provided RCJ with access to Samaritan Hospital's medical records. However, Ms. Young failed to keep this password secure and instead taped it to a computer console in her office or left it in a drawer.

23. Upon information and belief to facilitate this policy, Sheriff Mahar personally accessed and/or directed other employees of the Rensselaer County Sheriff's Department, including Defendants Young and Dinan, to improperly access personal and medical information of multiple employees who were absent from work, were harmed at work, or were filing

workers' compensation claims. This is evident by the fact that Sheriff Mahar personally handled all claims for sick leave or other injury related benefits.

24. This is not the first time that high ranking Rensselaer officials have abused their power in order to access confidential information. The employees of the Rensselaer County Jail, under the supervision of Sheriff Mahar, had a pattern and practice of breaching the privacy of citizens and improperly accessing computer databases. In fact, upon information and belief, Sheriff Mahar was aware of, and on several occasions, personally directed Rensselaer County Jail employees to improperly access computer databases.

25. For instance, Anthony Patricelli, an RCJ Master Sergeant who reported directly to Sheriff Mahar, previously admitted to instructing an RCJ Corrections Officer to improperly access a private citizen's personal records and file a false document indicating that the access was needed to check the background of a new inmate at the Rensselaer County Jail. Defendant Patricelli was charged with two felonies including Falsifying Business Records and Computer Trespass and Official Misconduct, a misdemeanor.

26. Ultimately, Anthony Patricelli pleaded guilty to a single count of unauthorized use of a computer. Unbelievably, Defendant Patricelli was not disciplined by Defendant Mahar and remains employed at the Rensselaer County Jail. It is clear that Defendant Mahar's failure to take action against Defendant Paticelli, in the face of unquestionably illegal conduct, that Defendant Mahar and the County of Rensselaer has ratified the conduct of Defendant Patricelli and other employees as it relates to the unauthorized access of citizen's private information.

27. Upon information and belief, Sheriff Mahar also personally directed and/or knew or should have known of the improper access of the medical records of several other Rensselaer County Corrections Officers and the medical records of a nine year old girl.

28. At all times relevant to this Complaint, the Individual Defendants acted within the scope of their authority to act as public servants for the County of Rensselaer and the State of New York.

29. At all times relevant to this Complaint, the Individual Defendants were acting under color of state law, that is, under the color of statutes, laws, charters, ordinances, rules, regulations customs and the usages of the County of Rensselaer and the State of New York.

30. The Defendants should have known that their actions violated clearly established law protecting the Constitutional and statutory rights of the Plaintiffs.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION BY PLAINTIFFS AGAINST ALL DEFENDANTS

— Violation of Constitutional Rights under Color of State Law — Invasion of Privacy

31. Plaintiff incorporates by reference and realleges each and every allegation stated in Paragraphs 1 through 30.

32. The Fourteenth Amendment of the United States Constitution protects a citizen's right to privacy against unreasonable government intrusion. As such, citizens have a clearly established right in maintaining the confidentiality of medical information.

33. The actions of the Individual Defendants violated Plaintiff's right to privacy in his medical information, in that the Individual Defendants used the RCJ medical computer to access the Plaintiff's medical records to gain advantage over him in his employment with the Rensselaer County Sheriff's Department. In the alternative, the Individual Defendants, even if they did not actually access the Plaintiff's medical records, conspired with each other to violate the Plaintiff's right to privacy.

34. The Individual Defendants' actions were motivated by bad faith and malice.

35. The Defendants' conduct also represents a violation of 42 U.S.C. §1983, given that their actions were undertaken under color of state law.

36. The County of Rensselaer is directly responsible for this constitutional violation based on the actions of their chief policy maker, Defendant Mahar. Specifically, Defendant Mahar is, upon information and belief, directly responsible for the efforts to access the Plaintiff's medical records to gain advantage over the Plaintiff regarding his legitimate use of sick leave. This is evident given Defendant Mahar instituted an affirmative policy and he ratified the conduct of other employees who engaged in such violations. In the alternative, Defendant Mahar knew, or should have known, given the pattern of official abuse of power, that Rensselaer County employees were wantonly violating the privacy rights of citizens and he failed to intervene to prevent these violations.

37. Rogers' depression is a medical condition which qualifies for Constitutional protection.

38. As a direct and proximate result of the unconstitutional acts described above, Plaintiff has been irreparably injured.

39. Upon information and belief, Defendant Mahar and the County of Rensselaer are responsible for establishing policies and procedures to be utilized by employees of the Rensselaer County Sheriff's Department.

40. Upon information and belief, given the on-going patterns of official abuse of power as it relates to the unauthorized access of citizen's personal information, the Rensselaer County Sheriff's Department has not established policies detailing the circumstances under which employees can access personal information of citizens. In the alternative, Defendants have

instituted polices addressing these issues, but then through gross negligence and carelessness have demonstrated deliberate indifference to the constitutional rights of citizens by failing or intentionally refusing to enforce them.

41. These policies, procedures and practices of the above-named Defendants violated the rights of Plaintiff under the United States Constitution.

42. Upon information and belief, Defendant Mahar is responsible for supervising Defendants Young and Dinan.

43. Upon information and belief, given the patterns of official abuse of power as it relates to the unauthorized access of citizen's personal information, Defendant Mahar and the County of Rensselaer have failed to supervise and/or discipline deputies under their supervision, including Defendants Young and Dinan, for previous misconduct that resulted in the repeated violations of the civil rights of citizens.

44. Additionally, Defendants have failed to institute an appropriate training regimen on a variety of subjects including the circumstances under which employees can access the personal information of citizens.

45. In the alternative, Defendants have instituted training regimens to address the issues listed above, but then have, through gross negligence and carelessness, demonstrated deliberate indifference to citizen's privacy rights by failing to adequately hire, screen, train and supervise Rensselaer County Sherriff Deputies.

46. As a direct and proximate result of the unconstitutional acts described above, Rogers' has suffered irreparable damage including, but not limited to, his career, finances, and emotional state.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS MAHAR AND THE COUNTY OF RENSSELAER

— Violation of Constitutional Rights under Color of State Law —
First Amendment Retaliation

47. Plaintiff incorporates by reference and realleges each and every allegation stated in Paragraphs 1 through 30.

48. Defendants, while acting under color of state law, intentionally deprived Rogers of his constitutional right to free speech by retaliating against him for engaging in political activity, through a pattern and practice of workplace harassment over several years from 2004 through late January 2012. Such harassment culminated in Rogers being placed on Administrative Leave on or about January 30, 2012.

49. Defendants' actions, as set forth in paragraphs 1 through 30, *supra*, were taken under color of state law.

50. Rogers engaged in constitutionally protected political activity, a form of free speech, when he supported Mahar's political opponents in the 2003 and 2011 elections for Rensselaer County Sheriff.

51. Roger engaged in constitutional protected activity when he formed and actively participated in SEARCO.

52. The incidents of harassment, which occurred from 2004 through late January 2012, caused Rogers' work environment to become unreasonably inferior and adverse when compared to a typical or normal workplace.

53. The harassing conduct which occurred from 2004 through late January 2012 would have dissuaded a similarly situated individual of ordinary firmness from exercising his or her constitutional rights;

54. Defendants' actions, which included placing Rogers on administrative leave in late January 2012 and barring Rogers from entering the Rensselaer County Jail would have dissuaded a similarly situated individual of ordinary firmness from exercising his or her constitutional rights;

55. Defendants actions, which included improperly accessing Rogers' medical records and uncovering intimate details of his mental health history would have dissuaded a similarly situated individual of ordinary firmness from exercising his or her constitutional rights;

56. Rogers' constitutionally protected activity was a motivating factor in the Defendants' decision to take the actions described in paragraphs 1 through 30, *supra*.

57. Rogers has and continues to suffer damages as a result of defendants' unconstitutional actions.

DEMAND FOR PUNITIVE DAMAGES

58. The actions of the individual Defendants Mahar, Dinan, and Young described herein were extreme and outrageous, and shock the conscience of a reasonable person. Consequently, an award of punitive damages is appropriate to punish the Defendants for their cruel and uncivilized conduct. Plaintiff does not seek an award of punitive damages against the Defendant County of Rensselaer.

DEMAND FOR TRIAL BY JURY

59. The Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kevin Rogers requests that this Honorable Court grant him the following relief:

A. A judgment in favor of the Plaintiff against all Defendants for compensatory damages in an amount to be determined by a properly charged jury;

B. A judgment in favor of the Plaintiff against Defendants Mahar, Young and Dinan for punitive damages in an amount to be determined by a properly charged jury;

C. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988;

D. Any other relief that this Court finds to be just, proper and equitable.

Dated: July 21, 2015

Respectfully Submitted By:

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ATTORNEY FOR PLAINTIFF
KEVIN ROGERS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEVIN ROGERS,

Plaintiff,

Civil Case No.:

-against-

VERIFICATION

RENSSELAER COUNTY SHERIFF'S DEPARTMENT, JACK MAHAR, KATRINA DINAN and ELAINE YOUNG,

Defendants.

I, Kevin Rogers, being duly sworn and under oath, do hereby verify that I am the party-Plaintiff to the above-captioned civil action, I have read the allegations of the within *Verified Amended Complaint* and I attest to the truth thereof.

Kevin Rogers

STATE OF NEW YORK)
ss.:
COUNTY OF ALBANY)

On the 21st day of July in the year 2015, before me, the undersigned, Kevin Rogers, personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual executed the instrument.

K P Nosal

NOTARY PUBLIC

KARIN P. NOSAL
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01NO6206884
QUALIFIED IN RENSSELAER COUNTY
COMMISSION EXPIRES JUNE 1, ~~2013~~ 2017